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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JOHN H. SYKES,

Plaintiff,

v.

**ROSADIA D. ESCUETA, PAUL THORNTON,
CHONG A. IM, INDIVIDUALLY AND AS
TRUSTEE OF THE CHONG A. IM TRUST
DATED 9/21/07, KEVIN IM AND JACKIE IM,**

Defendants.

**ROSADIA D. ESCUETA, PAUL THORNTON,
CHONG A. IM, INDIVIDUALLY AND AS
TRUSTEE OF THE CHONG A. IM TRUST
DATED 9/21/07, KEVIN IM AND JACKIE IM,**

Counterclaimants,

v.

JOHN H. SYKES,

Counterdefendant.

Case No. 3:10-CV-03858-SC

**STIPULATION AND [PROPOSED] ORDER
WITHDRAWING COUNTERDEFENDANT
JOHN SYKES 12(b)(6) MOTION WITHOUT
PREJUDICE AND STAYING CASE PENDING
COMPLETION OF SETTLEMENT**

Judge: Hon. Samuel Conti

Date Complaint Filed: August 27, 2010

1 Defendants and Counterclaimants Rosadia D. Escueta, Paul Thornton, Chong A. Im,
2 Individually and as Trustee of the Chong A. Im Trust dated 9/21/07, Kevin Im and Jackie Im
3 (hereinafter collectively referred to as "COUNTERCLAIMANTS"), by and through their respective
4 counsel of record, Jeffrey A. Feldman and Thomas H. Porter of the Law Offices of Jeffrey A.
5 Feldman, and the Plaintiff and Counterdefendant John H. Sykes ("COUNTERDEFENDANT"), by
6 and through his counsel of record, Chad R. Fuller, hereby enter into this stipulation
7 ("STIPULATION") with regard to the following facts:

8 A. COUNTERDEFENDANT has filed a motion pursuant to Federal Rule of Civil
9 Procedure 12(b)(6) with respect to the COUNTERCLAIMANTS' Counterclaim, which was filed by
10 the COUNTERCLAIMANTS on January 7, 2011. The 12(b)(6) motion is currently scheduled to be
11 heard by the Court on May 13, 2011, at 10:00 a.m. COUNTERCLAIMANTS' opposition to the
12 motion is due April 22, 2011.

13 B. Also on May 13, 2011 at 10:00 a.m., the Initial Case Management Conference in
14 this matter is scheduled. Likewise, per the Court's order setting the Initial Case Management
15 Conference and ADR deadlines, the last day for the parties to file a Rule 26(f) report, complete
16 initial disclosures, or state objection in Rule 26(f) report and file a case management statement, is
17 May 6, 2011.

18 C. COUNTERCLAIMANTS have entered into settlement agreements and releases with
19 the insurance company of a brokerage firm, GunnAllen Financial, Inc. ("GunnAllen"), which
20 insurance ostensibly also covers COUNTERDEFENDANT. COUNTERCLAIMANTS have also
21 entered into a mutual release with COUNTERDEFENDANT. GunnAllen is currently in a Chapter
22 11 bankruptcy proceeding in the United States Bankruptcy Court, Middle District of Florida, Tampa
23 Division, Case No. 8:10-bk-09635-MGW. These settlement agreements and releases have been
24 fully executed and approved by the bankruptcy Judge. Now that the settlements have been
25 approved, the parties are awaiting the final, non appealable Order from the bankruptcy court , after
26 which payment will issue and this matter will be fully resolved. The parties anticipate that the Order
27 should issue at or near the end of April 2011, and that payment should be made within 30 days
28 thereafter.

D. In order to allow sufficient time for the settlement to be concluded, which settlement will result in the dismissal of these proceedings, and to avoid wasting the parties' and the Court's time and resources in this matter, the parties herein have stipulated to a withdrawal without prejudice of COUNTERDEFENDANT's 12(b)(6) motion with respect to the Counterclaim, and to a stay of these proceedings to August 31, 2011 pending completion of the terms of the settlement. In the event that the settlement is not completed by August 31, 2011, COUNTERDEFENDANT will re-notice the 12(b)(6) motion and the case will be placed back on the Case Management Conference calendar.

NOW THEREFORE, IT IS HEREBY STIPULATED by and between COUNTERCLAIMANTS Rosadia D. Escueta, Paul Thornton, Chong A. Im (individually, and as Trustee of the Chong A. Im Trust dated 9/21/07), Kevin Im and Jackie Im, and COUNTERDEFENDANT John H. Sykes, that subject to the Court's approval:

- a. The 12(b)(6) motion filed by COUNTERDEFENDANT is hereby withdrawn without prejudice and this case stayed until August 31, 2011, pending completion of the terms of the above referenced settlement. If the settlement is not completed by August 31, 2011, COUNTERDEFENDANT will re-notice the motion and the Case Management Conference will be placed back on calendar.

DATED: April 21, 2011

LAW OFFICES OF JEFFREY A. FELDMAN

By /S/ Jeffrey A. Feldman
 Jeffrey A. Feldman
 Attorneys for Counterclaimants
 Rosadia D. Escueta, Paul Thornton, Chong A.
 Im (individually, and as trustee of the Chong A.
 Im Trust dtd. 9/21/07), Kevin Im, and Jackie Im

DATED: April 21, 2011

FOLEY & LARDNER LLP

By /S/ Chad R. Fuller
 Chad R. Fuller
 Attorneys for Counterdefendant
 John H. Sykes



1 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

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4 Dated: _____, 2011

5 Hon. Samuel Conti, Judge
6 United States District Court
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